IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 36782 of 2007(D)

PETITIONER:

M/S.KMP INDUSTRIES,
P.M.ROAD, MUVATTUPUZHA, REPRESENTED BY
ITS PARTNER, K.P.SAIRAJ.

BY ADV. SRI.P.S.RAMAN(SR.)
SRI.P.N.DAMODARAN NAMBOODIRI
SRI.BOBBY JOHN

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, KOLLAM.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM.

3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, MUVATTUPUZHA.

BY GOVT. PLEADER MR. C.K. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON 18/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 36782 OF 2007 D

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Dated this the 18th day of December, 2007

J U D G M E N T

Ext. P15 order of conditional stay is under challenge. Exts. P2 to P5 are penalty orders for the assessment years 2001-02, 2002-03, 2003-04 and 2004-05. Aggrieved by the penalty orders, revision applications were filed by the petitioner which are produced as Exts. P6 to P9. Along with these revisions petitions, the petitioner has also filed Exts. P10 to P13 stay petitions. During the pendency of the stay petitions revenue recovery proceedings were initiated by Ext. P14 and thereupon the petitioner moved for early hearing of the stay petitions. Accordingly, the stay petitions were heard and the 2nd respondent has passed Ext. P15 order granting stay on the petitioner remitting 50% of the total amount due to be paid in two instalments, the first one payable on the 10th of November, 2007 and the second one on or before 10-12-2007. It is also directed that the petitioner should furnish adequate security for the balance amount to the satisfaction of the assessing authority. It is challenging Ext. P15 order that this writ petition has been filed.

2. Learned counsel for the petitioner raised arguments mainly on the unsustainability of the penalty orders. However, I am not satisfied that when the statutory revisional authority is seized of the revision petitions, this Court should at least at this stage, examine and pronounce on the correctness or otherwise of the order of penalty that has been passed. It is for the petitioner to canvass these contentions before the revisional authority and it is for that authority to consider the contentions.

3. Presently, the only question is whether the condition imposed for granting stay is too onerous a condition, warranting interference by this Court under Article 226 of the Constitution. A reading of Ext. P15 itself shows that the revisional authority had appreciated the contentions and was satisfied that the petitioner had made out a case for conditional stay. However, having regard to the fact that what is sought to be levied on the petitioner is penalty and not tax, I feel that the order needs modification since remittance of 50% is too onerous.

4. In similar cases, this Court had modified the order of stay reducing the remittance to 1/3rd of the amount that is due and also

granted stay. Therefore, consistent with the orders that have already been passed, in this case also, I direct that Ext. P15 will stand modified as follows:

Steps for collection of the penalty imposed on the petitioner under Section 45A of the KGST Act for the years 2001-02 to 2004-05 will stand stayed until the disposal of Exts. P6 to P9 revision petitions on condition that the petitioner remits 1/3rd of the penalty amount levied on it within three weeks from today and furnish adequate security for the balance amount to the satisfaction of the assessing authority.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-